

This is an appeal from a preliminary hearing order. Consequently, not every alleged error is subject to review. The Board can review preliminary hearing orders in which an

administrative law judge has exceeded his or her jurisdiction.¹ Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are:

- (1) did the worker sustain an accidental injury,
- (2) did the injury arise out of and in the course of employment,
- (3) did the worker provide the employer with timely notice and with timely written claim, and
- (4) do certain other defenses apply.

The term “certain defenses” refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.²

The issues of whether a worker needs ongoing medical treatment or whether the employer is failing to provide medical treatment are not jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. Those issues do, however, comprise questions of law and fact over which an administrative law judge has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

Respondent and its insurance carrier’s argument that the Judge exceeded her jurisdiction by appointing a specific doctor to treat claimant is without merit. At a preliminary hearing, a judge has the authority to determine whether an employer has failed or neglected to provide an injured worker with medical treatment and, if so, the judge may appoint a doctor to provide such treatment.

WHEREFORE, the Board dismisses this appeal.

IT IS SO ORDERED.

¹ K.S.A. 2002 Supp. 44-551(b)(2)(A).

² *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

Dated this ____ day of July 2003.

BOARD MEMBER

c: Steven R. Wilson, Attorney for Claimant
Janell Jenkins Foster, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director